

CLAIMS

In claim 14, line 2, change “elastic closure caps” to - - stopper - -. A copy of the amended claims is attached.

REMARKS

The indication of allowable subject matter is noted with appreciation. In view of the clarity of specification and drawing, the 35 USC 112, first paragraph, rejection is traversed. The claim rejected under 35 USC 112, second paragraph, are believed to be definite or amended to be definite. The 35 USC 102(b) and 35 USC 103(a) rejections are traversed as it is believed that the rejections find no support in fact or law.

35 USC 112 First and Second Paragraph Rejections

Claims 4, 5 and 14 are rejected under the first paragraph of 35 USC 112 as containing subject matter not described in the specification so as to enable one skilled in the art to make and use the invention and claims 5 and 14 are rejected under the second paragraph of 35 USC 112 for failing to particularly point out and distinctly claim the invention.

These rejections are traversed as having no support in fact or law.

1. The specification is addressed to the mechanic in the art. There is seen to be nothing missing or undisclosed that would give the inventor or mechanic in the art a problem in

understanding the invention. Every patent application relies to some extent on the reader's knowledge of the terms, concepts and constructions it embodies and, therefore, relies to some extent upon knowledge of persons skilled in the art to complement that disclosed in order that it be enabling within the meaning of 35 USC 112. Rengo Co. Ltd. v. Molins Machine Co. Inc., 211 USPQ 303 (3d Cir 1981); State Industries, Inc. v. A.O. Smith Corp., 221 USPQ 958 (Tenn D Ct 1982). In re Bode, Nolan, baker, Mathias, and Pfaender, 193 USPQ 12 (CCPA 1977).

2. The applicant is to avoid unnecessary verbiage that adds nothing to the art. A patent need not teach, and preferably omits, what is well known in the art. Hybritech, Inc. v. Monoclonal Antibodies, Inc., 231 USPQ 81 (CAFC 1986).

3. The mechanic in the art would be able to make and use the invention with nothing more than the abstract and drawing Fig. 2. The issues involved are simple concepts in a developed art. The Federal Circuit has stated that a term in a claim is to be given a construction consistent with the ordinary meaning of the term and also consistent with the intrinsic evidence from the patent itself. Hill-Rom v. Kinetic Concepts & KCI Therapeutic Servs, No. 99-1314 (Fed. Cir. Apr. 14, 2000). A claim term is to receive its ordinary and customary meaning. The words and drawings of the patent in suit reinforce the plain and customary meaning of the disputed terms. Cortland Line v. Orvis, Nos. 99-1081 and 1109 (Fed. Cir. Feb. 14, 2000).

4. The invention is described with enough specificity in the disclosure to enable any one having average intelligence, but not skilled in the art to make and use the simple dispenser of the invention. The inquiry is to determine whether the claims do, in fact, set out and circumscribe a particular area with a reasonable degree of precision and particularity. Ex parte Kristensen, 10 USPQ2d 1701 (BdPA&I 1989). The standard of definiteness is one of reasonableness under the

circumstances, the teachings of the prior art and the nature of the invention. Radio Steel & Mfg. Co. v. MT Products, Inc., 220 USPQ 35 (Ohio DC 1982); Antonious v. Pro Group, Inc., 217 USPQ 875 (6th Cir 1983). The Federal Circuit has rejected the notion that literal support in the specification for well understood terms and practices is required under § 112. See In re Kaslow, 217 USPQ 1089 (CAFC 1983) which states:

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claimed language. In re Edwards, 558 F.2d 1349, 196 USPQ 465 (CCPA 1978); In re Herschler, 591 F.2d 693, 200 USPQ 711 (CCPA 1979). (Emphasis supplied.)

As to the sufficiency of the disclosure, claim 4 recites the circumferential recess formed between circumference side wall **62** and outer sealing rim **43**, with the outer sealing rim having an annular recess **at 66**, and the elastic cap having a resilient closure shoulder **66**. Claim 5 recites a sealing rim on the stopper and an outwardly offset shoulder on the elastic closure cap skirt. Claim 14 recites an annular recess on the elastic closure cap outer sealing rim for securing the cap to the stopper, and plural resilient tines on the closure cap for rubbing.

Page 7 of the specification addresses the structure shown in Fig. 2. It is, or should be, clear from Fig. 2 and page 7 that claims 4, 5 and 14 address the structure for securing the closure cap **47** onto the stopper **48**. The cap has a lower extent **55** that is thicker and extends outwardly and is placed between the stopper **48** side wall **62** and sealing rim **43** where the stopper upper projection **61** is crimped inwardly and downwardly **50** to clamp the sealing rib **55** onto the stopper. The lower end of the skirt **64** is offset forming a shoulder **66** that mates with an annual

recess at **66** formed in the outer sealing rim **43**. This structure assists sealing of the sealing rib **55** to the stopper.

It is believed that any person of average intelligence and able to read and understand the English language would be able to understand the invention as disclosed.

The test for a 35 USC 112, first paragraph, rejection is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of later claimed subject matter. Vas-Cath Inc. v. Mahurkar. 19 USPQ 2d 1111 (FedCir 1991). It is believed that the original disclosure contains sufficient teachings to enable one skilled in the art to make and use the invention. In re Moore, 169 USPQ 236 (CCPA 1971). Even though there is literal support in the specification as filed for the claimed subject matter, such literal support is not necessary. Ex Parte Rohrer, 20 USPQ 2d 1460 (Bd PA&I 1990).

As to being definite, the stopper **48** outer sealing rim **43** annular recess and resilient closure shoulder at **66** is the same in claims 4 and 5 as can be clearly seen in Fig. 2. As to claim 14, the claim as originally filed was indefinite. The claim should read - - said stopper outer sealing rim - - and should not read "said elastic closure caps outer sealing rim." The recitation of "elastic closure caps" was inadvertently used when - - stopper - - should have been used.

Claim 14 has been amended to correct the wording. Both claims 5 and 14 are now believed to be definite.

35 USC 102(b) Rejections

Claims 1 - 3, 6, 7, 12 and 15 are rejected under 35 USC 102(b) as being anticipated by McCabe (U.S. 2,083,156).

The 35 USC 102(b) rejection is traversed because not one of the claims is anticipated by McCabe.

Anticipation requires the presence in a single prior art reference of each and every element of the claimed invention arranged as in the claim, and the trier of fact must identify the elements of the claims, determine their meaning in light of the specification and identify corresponding elements disclosed in the alleged anticipation reference. 37 CFR 1.106(b); Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co. et al, 221 USPQ 481 (CAFC 1984); In re Mullins, Wetherby and Chevalier, 179 USPQ 97 (CCPA 1973). Unless all the elements are found in exactly the same situation and united in the same way to perform the identical function in a single prior art reference, there is no anticipation. Scott v. Inflatable Systems, Inc., 222 USPQ 460 (CA 9th Cir. 1983). Before a reference can anticipate a claimed invention, that reference must put the public in possession of the claimed invention. The Patent Office has the initial burden. The applicant does not have to prove novelty to obtain a patent. Every limitation positively recited in the claim must be given effect in determining what subject matter that claim defines under 35 USC 102. In re Wilder, 166 USPQ 545 (CCPA 1970).

Claim 1 requires in the combination:

- a) a stopper having “a vertically opening circumferential recess within said first end outward from and around said fluid passage.”
- b) “said elastic closure cap skirt having an outwardly extending sealing rib fitting within said stopper vertically opening circumferential recess.”
- c) “said stopper vertically opening circumferential recess is formed by a circumferential side wall.”
- d) “said circumferential side wall terminates by extending inwardly above said outwardly extending sealing rib to lock said elastic closure cap to said stopper.”

McCabe does not teach these structures:

- a) The present claim 1 requires the stopper to have a vertically opening circumferential recess. This claimed vertically opening circumferential recess is shown with a base **63** and side wall **62** forming the vertically opening circumferential recess in Fig. 2. The patent to McCabe shows an annular seat **17** that opens outwardly or perpendicularly to the body” in Figs. 2 and 3.
- b) The present claim 1 requires the elastic closure cap skirt to have an outwardly extending sealing rib within the vertically opening recess. This claimed sealing rib is shown as **55** in Fig. 2 positioned within the vertically opening recess. The patent to McCabe teaches an internally extending head **16** in Figs. 2 and 3.
- c) The present claim 1 requires a side wall for forming the circumferential recess. This claimed side wall is shown as **61** in Fig. 2. The patent to McCabe has nothing that can be construed to be a side wall forming a vertically opening circumferential recess.

d) The present claim 1 requires that the circumferential side wall terminate inwardly above the sealing rib to lock in the closure cap. This claimed locking means is shown as **50** in Fig. 2. The patent to McCabe has nothing that can be construed to be a side wall terminating so as to lock in the closure cap or to terminate inwardly above a sealing rib to lock in the cap.

It is to be noted that the structural differences are significant. While not specifically recited in claim 1, to have the bulb **15** of McCabe held on the body, it of necessity must have the bead **16** retained within seat **17**.

The patent to McCabe does not anticipate claim 1 or any of its dependent claims 2, 3, 6, 7 and 12.

In a similar manner, McCabe does not teach a recess that has an outside diameter smaller than the elastic closure cap skirt inserted therein for sealing the lip as required by claim 2; or a limit rib **42** as required by claim 3.

Independent claim 15 requires:

- i. an “elastic closure cap skirt having an outwardly extending enlarged sealing rib.”
- ii. the “stopper outer circumference upper end extending inwardly above said enlarged sealing rib securing it to said stopper.”

iii. the means for applying force on the lip is “a difference between the circumferential length of said elastic closure cap skirt and said means for securing said elastic closure cap skirt to said stopper.”

McCabe does not teach these structures:

- i. Claim 15 requires an outwardly extending enlarged seating rib 55. The “enlarged sealing rib” of McCabe **16** extends inwardly.
- ii. Claim 15 requires that the stopper outer circumference upper end 50 extend inwardly. The upper circumference of the McCabe body **11** at **1** extends outwardly.
- iii. Claim 15 requires that the means for applying force on the lip is the difference in the circumferential lengths of the cap skirt 64 and the stopper 43. The patent to McCabe is silent as to the relationship between the circumferential lengths of the bead **16** and body **11**. The patent by McCabe is silent as to how force is applied to the valve **19**. A finding of anticipating requires more than a speculation. Anticipation cannot be predicated on mere conjecture as to characteristics of the prior art. Ex parte Standish, 10 USPQ2d 1454 (BdPatApp&Inter, 1988). Even the doctrine of necessary inherency requires “certainty” and not “mere probability.” Ethyl Molded Products Co. v. Betts Packaging, Inc., 9 USPQ2d 1001 (DCE Ky, 1988). “Substantial representation of the invention” by a reference is not enough to support an anticipation rejection. Friction Division Products, Inc. v. E.I. DuPont Co., 12 USPQ2d 1575 (CAFC, 1989).

It is to be noted that the structural differences with McCabe are significant. While not specifically recited in claim 1 to have the bulb **15** of McCabe held on the body **11**, the lower

outer extent of the bulb 15 must have a smaller diameter than that of the collar-like body 11 at the seat 17. This inherently requires the bulb 15 to be placed in tension. Having the bulb 15 in tension would inherently place a downward pressure on stem 18 and/or require a short stem 18 to place an upward pressure on valve 19. The present invention, and structure claimed, provide a “bulb” 47 that is in compression to close the “valve” 46.

The Examiner has ignored the physical structure’s differences claimed as well as its advantages. The structure of McCabe has been misconstrued or modified. The Examiner has resorted to modifying the claimed structure and/or prior art so as to read the claims on the prior art. It is not proper use of a reference to modify its structure to one which prior art references do not teach. In re Randal et al, 165 USPQ 586 (CCPA 1979). Such modification cannot be relied upon. Milliken Research Corp. v. Beaunit Corp., 182 USPQ 421 (DCWDNC 1974).

The only purpose of the McCabe dome structure is to open the valve by pressing on the dome. Pressing on the dome causes a vertical (linear) force on the valve stem that opens the valve. However, this is not the only force created. A pressure on the dome inherently also causes a horizontal (lateral) outward force on the dome 15. The physical structure of McCabe results in the lateral outward pressure tending to remove the dome from the dispenser by increasing the circumferential length of the bead 16 and/or by reducing the ability to hold the bulb 15 onto the body 11.

The claimed structures are different and operate differently. The prior art must address and provide the inventors answers to the particular problems in issue. In re Winslow, 151 USPQ 48 (CCPA 1909).

Claim 15 is not anticipated by McCabe.

35 USC 103(a) Rejections

Claims 8 and 9 are rejected under 35 USC 103(a) as being unpatentable over McCabe in view of Gibbons (U.S. 2,921,324). Gibbons teaches the use of tines.

The claims 8 and 9 depend from claim 1. The differences between claim 1 and McCabe are listed under the remarks addressing the 35 USC 102(b) rejections above. The patent to Gibbons does not provide or render obvious any of the deficiencies of McCabe. Claims 8 and 9 are patentable with claim 1.

While the mere addition of tines onto the surface of McCabe appears to be an obvious addition, the entire purpose of the claimed structure has been trivialized.

The Examiner's proposed addition of the tines of Gibbons onto the dome of McCabe for rubbing finds no support in the disclosure of McCabe.

McCabe does not teach rubbing. McCabe does not suggest discharge through the dome. The only discharge by McCabe is through a threaded faucet. The present invention eliminates the need for such a discharge. The provision of the locking means for the lower ends of the closure cap enables the lower ends to be secured to the stopper even with lateral pressure on the tines and the dome. The structures are different and the internal force distributions are different.

Even though apparatus claims cover what device is, not what it does, and this invention need not operate differently than the prior art in order to be patentable, but need only be different, it does operate differently. Hewlett-Packard Co. v. Bausch & Lomb, Inc., 15 USPQ2d 1525 (CAFC 1990).

The structures resulting from combining McCabe & Gibbons are different from those claimed and do not result in the same interaction of the elements as required by the claims, therefor, the rejection must be reversed. In re Ehrreich et al, 200 USPQ 504 (CCPA 1979); In re Haas et al 144 USPQ98 (BdAp 1964).

The structure claimed results in a more difficult separation of the bulb and bead. The rejection modifies the structure disclosed and claimed.

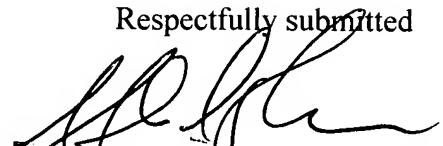
References are only good for what they clearly disclose or suggest. It is not proper use of a reference to modify its structure to one which prior art references do not teach. In re Randal et al, 165 USPQ 586 (CCPA 1979); In re Fine, 5 USPQ2d 1596 (CAFC 1988).

Claims 8 and 9 are not obvious over McCabe in view of Gibbon.

CONCLUSION

It is believed that the claims are definite and patentable over the references of record and in condition for allowance. Such action is earnestly solicited.

Respectfully submitted



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